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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE STATIC RANDOM ACCESS
MEMORY (SRAM) ANTITRUST
LITIGATION

Case No. 4:07-md-1819 CW
MDL No. 1819

This Document Relates to:
ALL ACTIONS

**ORDER GRANTING SAMSUNG'S
ADMINISTRATIVE MOTION TO FILE
LENIENCY AGREEMENT UNDER
SEAL FOR *IN CAMERA* REVIEW**

1 At the December 14 Pretrial Conference and by its December 16, 2010 Order on
2 Motions in Limine and For Pre-Trial Preparation (Docket No. 1206), the Court granted defendants
3 Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc.'s (collectively "Samsung")
4 Motion in Limine No. 2 to exclude at trial any evidence of or reference to Samsung's leniency
5 agreement with the U.S. Department of Justice ("DOJ") in connection with DOJ's investigation of
6 the SRAM industry, or any other evidence of or reference to that investigation. However, the
7 Court ordered Samsung to lodge with the Court for *in camera* review, along with a proposed
8 sealing order, a copy of the January 17, 2006 letter memorializing Samsung's leniency agreement
9 with DOJ (the "leniency agreement"), so that the Court could confirm that the letter does not
10 provide a basis for impeachment of Samsung witnesses at trial. On December 29, 2010, Samsung
11 filed an Administrative Motion to File Leniency Agreement Under Seal For *In Camera* Review
12 (the "Motion"), and lodged the leniency agreement with the Court as Exhibit A to the
13 accompanying Declaration of Michael W. Scarborough.

14 After due consideration of the leniency agreement *in camera*, the other papers
15 submitted, the Court's file in this matter, and for good cause shown, IT IS HEREBY ORDERED
16 THAT Samsung's Motion is GRANTED for the reasons set forth below.

17 The leniency agreement does not provide a proper basis for impeachment of
18 Samsung witnesses. Samsung's leniency agreement required Samsung to report only a "possible"
19 violation of the Sherman Act, and did not require Samsung to admit to any violation of the
20 antitrust laws or any other wrongdoing. Moreover, the agreement requires "truthful" and "candid"
21 cooperation with DOJ, and expressly bars cooperating witnesses from falsely protecting or falsely
22 implicating any person or entity.

23 The Court finds that Samsung has shown good cause for permanently filing the
24 leniency agreement under seal pursuant to Civil Local Rule 79-5. Strict confidentiality of leniency
25 agreements is essential to the proper functioning of DOJ's antitrust amnesty program, and
26 Samsung has treated its leniency agreement as confidential and taken reasonable measures to
27 safeguard it from disclosure outside the company. The leniency agreement also shall not be
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1 provided to Plaintiffs or Cypress. In addition to the reasons stated above, the Special Master has
2 already denied Plaintiffs' motion to compel Samsung to produce the leniency agreement in
3 discovery, ruling that disclosure of the letter would unfairly prejudice Samsung.


4 IT IS THEREFORE ORDERED that Samsung's motion is GRANTED as follows:

5 (1) The leniency agreement (Exhibit A to the December 29, 2010, Declaration of
6 Michael W. Scarborough) shall be filed permanently under seal.

7 (2) The leniency agreement shall not be provided to Plaintiffs or Cypress. No
8 person other than the Court, or an appellate court before which this litigation is pending, is
9 authorized to inspect the leniency agreement.

10
11 IT IS SO ORDERED.

12
13 Dated: 1/12/2011

14 
15 Hon. Claudia Wilken
16 United States District Court Judge

17 Submitted by:

18 MICHAEL W. SCARBOROUGH
19 **SHEPPARD MULLIN RICHTER & HAMPTON LLP**
20 *Attorney for Defendants*
21 *Samsung Electronics Company, Ltd. and*
22 *Samsung Semiconductor, Inc.*